

FILED/ACCEPTED
 SEP 28 2009
 Federal Communications Commission
 Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)	EB Docket No. 07-147
)	
PENDLETON C. WAUGH, CHARLES M.)	File No. EB-06-IH-2112
AUSTIN, and JAY R. BISHOP)	NAL/Acct. No. 200732080025
)	
PREFERRED COMMUNICATION)	FRN No. 0003769049
SYSTEMS, INC.)	
)	
Licensee of Various Site-by-Site Licenses in)	
the Specialized Mobile Radio Service.)	
)	
PREFERRED ACQUISITIONS, INC.)	FRN No. 0003786183
)	
Licensee of Various Economic Area Licenses)	
in the 800 MHz Specialized Mobile Radio)	
Service)	

To: Chief Administrative Law Judge
 Richard L. Sippel

NOTICE OF FILING

1. Pursuant to the Presiding Judge's Order, FCC 09M-57, released September 25, 2009, the Enforcement Bureau ("Bureau") hereby files the attached letters to the Presiding Judge for the record in the above-captioned docket.

2. Attachment A is a letter from Pendleton C. Waugh, dated September 16, 2009. Attachment B is a letter from the Bureau, dated September 17, 2009.

Respectfully submitted,
 Paula Michele Ellison
 Chief, Enforcement Bureau



Gary A. Oshinsky
 Anjali K. Singh
 Attorneys, Investigations and Hearings Division

No. of Copies Filed 046
 DATE FILED

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554
(202) 418-1420

September 28, 2009

ATTACHMENT A

LAW OFFICES OF
WILLIAM D. SILVA
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STEVENSVILLE, MD 21666
BILL@WMSILVALAW.COM

ADMITTED IN THE
DISTRICT OF COLUMBIA

PRACTICE BEFORE THE
FEDERAL COMMUNICATIONS
COMMISSION

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September 16, 2009

Hon. Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
Washington, D.C. 20554
Via e-mail: richard.sippel@fcc.gov

Re: EB Docket No. 07-147

Dear Judge Sippel:

I am writing on behalf of Pendleton C. Waugh ("Waugh") a party to the above-referenced proceeding, in response to your Order (FCC 09M-56) released September 10, 2009, directing the parties to file a Status Report advising whether the parties have agreed to a modification of the Settlement Agreement which your honor granted by Order (FCC 09M-51, released August 6, 2009). Your September 10 Order followed a Conference which you convened:

[T]o discuss procedures to terminate their case as to all
Parties without a hearing

As a result of the discussion held at the conference, the parties agreed to consult their respective clients to determine whether a proviso to be added to paragraph 21 of the Settlement Agreement would result in a universal settlement of the case. The purpose of the proviso, as we understood it, was to address Waugh's complaint that he had been effectively excluded from the settlement by the Bureau's requirement that it would not settle unless Waugh was prohibited from ever owning stock, even a beneficial interest, in Preferred Communications Systems, Inc ("PCSI").¹

¹ As you are aware, in paragraph 21 of the Settlement Agreement Mr. Austin also agreed on behalf of PCSI and Preferred Acquisitions, Inc. ("PAI") that Mr. Waugh never would "work for, contract for, consult for, ... PCSI, PAI, any Affiliate of PCSI, and/or any Affiliate of PAI." Given the FCC Enforcement Bureau's apparent admission that Mr. Waugh has not violated any statute or Commission rule or policy for the past ten years, Waugh opposes such a restriction or penalty. He therefore would require, as a condition to entering into any settlement agreement, that such language be removed. Moreover, given the serious legal questions raised by Michael Judy in his Motion for Limited Intervention and Renewed Motion for Limited Intervention with respect to Mr. Austin's lack of authority under applicable Delaware law to negotiate a binding settlement agreement on PCSI's and PAI's behalf, he would maintain that the Presiding Administrative Law Judge and FCC Enforcement Bureau should leave Mr. Waugh's future involvement, if

Initially, we would like to thank your honor for attempting to remove one impediment to a universal settlement in the case, the effective exclusion of Waugh from a universal settlement unless he agreed to forego a promised beneficial interest in PCSI. However, there are several other impediments to a universal settlement which also need to be addressed, to wit:

1. First, a question exists as to your honor's jurisdiction over the case. The Enforcement Bureau, in filing a Motion to Strike Waugh's Motion for Partial Summary Decision on August 7, 2009, first raised the issue. Thus, it argued that having terminated the case, your honor no longer had jurisdiction over it.
2. The second issue is whether the so-called "settlement agreement" is, in fact, a consent decree which was negotiated and granted in derogation of Section 1.93(b) of the Commission's Rules. Waugh has raised this in its Appeal from Presiding Officer's Final Ruling filed on September 8, 2009, arguing that pursuant to the *La Star* case,² summary decision was the proper way to resolve the case without hearing.
3. And three, a question has been raised as to Mr. Austin's authority to enter into the settlement agreement on behalf of PCSI and PAI.³ As you know, Michael Judy has filed suit in the Delaware Court of Chancery raising this issue for the benefit of all stockholders of PCSI and has unsuccessfully sought to intervene in this proceeding for the limited purpose of preserving its rights in the event it is successful in the Delaware Court. It is our understanding that the Delaware matter has been fully briefed and that a hearing has been scheduled before the Chancellor for September 29, 2009, to consider the matter.

Although issues one and two, above, are subject to debate and have not been fully briefed by all of the parties, the third issue may be resolved shortly and will have a clear impact on the validity of the settlement of this case. Consequently, we respectfully

any, with PCSI and PAI to the new Board of Directors to be elected at PCSI's first annual shareholders' meeting (with the date of such meeting to be determined by the Delaware Court of Chancery) and its new executive management. Finally, Mr. Waugh would require, as a condition to entering into a settlement agreement, that the FCC Enforcement Bureau agree that he has been fully "rehabilitated" and is no longer under any legal disability to serve as a director or executive officer of a FCC licensee or directly hold ten percent (10%) or more of the equity ownership of such licensee.

² *La Star Cellular Telephone Company*, 11 FCC Rcd 1059, 1060-61(1996).

³ Questions also exist as to Mr. Guskey's representation of PCSI and of Mr. Bishop. Although these were not raised at the conference convened on September 9, 2009, because of its limited scope, they nonetheless exist. Mr. Guskey's attempt to intervene as an individual stockholder was denied earlier in the proceeding. Now, it appears that he has been appointed a Vice President and is representing the corporation without filing a Notice of Appearance for either the company or the individual, Bishop. See Sections 1.21(d) and 1.221.

request the Presiding Judge to withhold a final resolution of these issues until the Delaware Court of Chancery rules.

Very truly yours,

A handwritten signature in black ink, appearing to read "William D. Silva". The script is cursive and fluid.

William D. Silva
Attorney for Pendleton C. Waugh

cc: Gary Oshinsky, Esquire (gary.oshinsky@fcc.gov)
Anjali Singh, Esquire (anjali.singh@fcc.gov)
Charles Austin (precomsys@aol.com)
Jay Bishop (jaybishopps@aol.com)

ATTACHMENT B



FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau, Investigations and Hearings Division
445 12th Street, SW, Suite 4-C330
Washington, D.C. 20554

September 17, 2009

VIA HAND DELIVERY AND EMAIL

Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, SW, Room 1-C768
Washington, D.C. 20554

Re: EB Docket No. 07-147

Dear Judge Sippel:

On September 10, 2009, you issued Order, FCC 09M-56, memorializing the substance of a formal Conference held a day earlier to discuss the means of achieving a universal settlement of this case. In that Order, you invited the parties in this proceeding to seek your assistance, by conference if necessary, in an attempt to resolve any lingering obstacles to settlement.¹ During the Conference you imposed a stay on pleadings. Surprisingly, yesterday Pendleton C. Waugh filed an additional request for action in this case that seeks to further delay a settlement. As a result, the Enforcement Bureau regretfully must request that you schedule another conference to assist the parties in meeting the goal of achieving final settlement now.

The letter of Mr. Waugh's counsel directed to you and dated September 16, 2009, mischaracterizes the Bureau's position, inserts new "impediments" to settlement that Mr. Waugh never raised at the September 9 Conference, and, in an apparent about face from the position advanced at that Conference, asks you to delay settling this case. The Bureau does not intend to violate the spirit of the freeze that you applied to filings in this case or wish to burden you with further pleadings and papers. However, the Bureau is compelled under the circumstances to respond, and, to the extent necessary, requests leave to so respond.²

¹ See *Pendleton C. Waugh, et al.*, FCC 09M-56, at 2 n.3 (ALJ Sippel, rel. September 10, 2009) ("The Presiding Judge is available to lend support and assistance to finalizing a universal settlement *via* e-mails, conference calls, and in-person conferences if deemed necessary")(emphasis in original). The Order also provides that the *one* remaining issue is that the parties would consider "a proviso" be added to the Settlement agreement providing that the prohibition against issuance of stock to Waugh be "subject to challenge by a court of competent jurisdiction."

² The Bureau notes that Mr. Waugh submitted his letter to you despite the freeze on the submission of further filings and papers and without any corresponding request for leave to do so.

First, Mr. Waugh suggests that the Bureau, in previous filings, questioned your jurisdiction of this case.³ The Bureau did nothing of the kind, and it is regrettable that Mr. Waugh has sought to interject this inflammatory accusation at a point in time when the Bureau has been entirely conciliatory. Further, even if the Bureau had raised this assertion, it would be moot in light of the Presiding Judge's August 20, 2009 Order (FCC 09M-53) staying his earlier termination of this case.

Second, Mr. Waugh erroneously asserts that Section 1.93 of the Commission's Rules bars resolution of this case via a settlement. This argument is curious, given Mr. Waugh's expressions of interest during the two-hour long Conference in settling this case without a hearing. The Bureau respectfully submits that there is considerable support for resolving this case via settlement,⁴ and Mr. Waugh's claim to the contrary is inconsistent with that of a party who is genuinely seeking to achieve a universal accord.

Third, Mr. Waugh incorrectly claims that ongoing state court litigation regarding Preferred Communication Systems, Inc.'s management's authority and internal corporate affairs endangers a valid settlement and that its outcome should further delay negotiations. Mr. Waugh has already briefed this issue in earlier pleadings,⁵ and never raised the matter at the September 9 Conference as a basis for precluding further negotiations. Notwithstanding, the Bureau respectfully submits that this outside contractual matter does not bear on the instant case and related settlement negotiations, and delay based upon such pending litigation contravenes Commission precedent.⁶

As a general matter, Mr. Waugh's correspondence suggests he is more interested in advancing a favorable private resolution in the local courts than he is in amicably resolving this proceeding. Mr. Waugh's long-running private contractual dispute with the companies for which he previously worked, however, is of no matter in this hearing, and it should not preclude a resolution that is in the *public* interest. The Bureau has an

³ Mr. Waugh alleges that the Bureau questions your jurisdiction in its August 7, 2009 Opposition to Mr. Waugh's Motion for Partial Summary Disposition. Therein, the Bureau requested the *Presiding Judge* to strike as moot Mr. Waugh's Motion for Partial Summary Decision, which was filed after the Presiding Judge adopted a Settlement Agreement in this case and terminated the proceeding in his August 6 Order, FCC 09M-51. The Bureau's Opposition is dated August 7, 2009, before the August 20 Order staying the effect of the August 6, Order terminating the case. It is absurd to mischaracterize the Bureau as questioning the Presiding Judge's jurisdiction over this case when the Bureau directed its Opposition to the Presiding Judge.

⁴ See *Kurtis J. Kintzel, et al.*, Order, FCC 09M-52, (ALJ Sippel, rel. August 6, 2009); *Publix Network Corporation*, Consent Order, 20 FCC Rcd 5857 (ALJ Sippel 2005); *Business Options, Inc.*, Consent Order, FCC 04M-08 (ALJ Sippel, rel. February 20, 2004); *Commercial Radio Service, Inc.*, Memorandum Opinion and Order, FCC 07M-12 (ALJ Steinberg, rel. April 26, 2007); *NOS Communications, Inc.*, Consent Order, FCC 03M-42 (ALJ Steinberg, October 29, 2003).

⁵ See Comments in Support of Motion for Limited Intervention, at 2-5, filed by Pendleton C. Waugh, on July 28, 2009; Errata to Comments in Support of Motion for Limited Intervention, at 2-5 filed by Pendleton C. Waugh, on August 6, 2009.

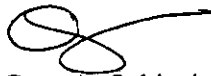
⁶ See, e.g., *Pappamal Kurian*, Letter, 24 FCC Rcd 4842 (Wireless Telecommunications Bur., Mobility Div., 2009) (holding that Commission practice is to accommodate final orders of courts of competent jurisdiction, absent compelling public reasons to do otherwise); *Metromedia Company*, Memorandum Opinion and Order, 3 FCC Rcd 595 (1988) (declining to intervene in parties' private contractual disputes).

obligation to serve the public interest and as stated previously believes that the existing settlement agreement satisfies that obligation.

For the foregoing reasons, the Bureau requests an immediate conference to confirm whether Mr. Waugh will continue along the lines you directed and toward a universal settlement by the September 21 deadline you set. If not, the Bureau respectfully requests that at the conference you set a schedule and parameters for any further pleadings required so you as the Presiding Judge may conclude this case now. The Bureau remains guardedly optimistic that with this conference settlement negotiations may continue timely as discussed at the September 9 Conference.

Please contact the undersigned with any questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to be "Gary A. Oshinsky", with a long horizontal stroke extending to the right.

Gary A. Oshinsky

Anjali K. Singh

Attorneys

Investigations and Hearings Division

Enforcement Bureau

cc:

William D. Silva, Esq.

Charles M. Austin

Charles D. Guskey

Jay R. Bishop

CERTIFICATE OF SERVICE

David Bradford, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that he has, on this 28th day of September 2009, sent by first class United States mail or electronic mail, as noted, copies of the foregoing "Notice of Filing," to:

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Chief Administrative Law Judge Richard L. Sippel*
Federal Communications Commission
445 12th Street, S.W., Room 1-C768
Washington, DC 20054

A handwritten signature in black ink, appearing to read "David Bradford", is written over a horizontal line.

David Bradford

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